Filed: 8/11/2020 3:22 PM
Lynne Finley
District Clerk
Collin County, Texas
By Tatiana Ortega Deputy
Envelope ID: 45288829

NO. 417-53803-2020

IN THE INTEREST OF	§	**IN THE DISTRICT COURT**
	§	
S.A.L., J.L.L., AND L.A.L.	§	**417TH JUDICIAL DISTRICT**
	§	
CHILDREN	§	**COLLIN COUNTY, TEXAS**

RESPONSE TO RESPONDENT'S MOTION FOR SANCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Michael Long, Petitioner herein, and files this response to Movant's Motion for Sanctions filed by Kelly Long, pursuant to Rule 13 of the Texas Rules of Civil Procedure and respectfully shows the Honorable Court the following:

I.

Movant filed the Motion for Sanctions alleging that Petitioner violated Rule 13 of the Texas Rules of Civil Procedure.

II.

Specifically, Movant contends that Petitioner violated Rule 13 in the following manner:

1. According to Movant, the Ex Parte Temporary Restraining Order is groundless and brought in bad faith and for the purpose of harassment "as there was no emergency to be dealt with, but rather Michael Long wanted to keep his children for longer than his extended summer possession as ordered and as such filed pleadings to create an emergency where one did not exist.
2. According to Movant, Petitioner's attorney and Petitioner engaged in misleading conduct by:
   a. "intentionally failed to address the alleged emergencies and abuse in

order to present an Ex Parte TRO without notice to Respondent's counsel,"

b. Leading the Court to believe "that this was not an active case, and that Respondent/Mother was not represented by counsel,"

c. "deliberately contact[ing] the Court [E]x [P]arte knowing that Respondent/ Mother was represented by counsel and fail[ing] to contact Respondent's counsel,"

d. failing "to inform the Court that Respondent was actively represented by Counsel when the application for the Ex Parte TRO was heard,

III.

1. *The pleading does not violate Rule 13 of the Texas Rules of Procedure:*

The Ex Parte Temporary Restraining Order is not groundless nor is it brought in bad faith or for the purpose of harassment. The Ex Parte Temporary Restraining Order was submitted with a Petition to Modify the Parent-Child Relationship with a request for Temporary Restraining Order including extraordinary relief. The Ex Parte Temporary Restraining Order is the only document alleged to have been filed that is groundless or filed in bad faith with the purpose to harass. The filing of the Proposed Order, and the subsequent filing of the signed order were not groundless or meant to harass. In almost every case in Collin County, a proposed order is electronically filed. This is never groundless or harassing. It is in fact a requirement. The filing of the signed order was done after the court served the signed order and asked that we file it. This was not groundless

or in bad faith.

2. *The actions of Petitioner and his attorney were not misleading.*

   a. Petitioner and Respondent had a case in Comal County. The divorce was granted on July 24, 2015. A Modification was filed March 28, 2016. The modification was mediated, and a settlement reached on August 4, 2017. A copy of the Comal County Register of Actions for Cause No. C2015-0238D is attached as Exhibit 1 and incorporated herein for all purposes. It should be noted that in Comal County on July 30, 2020 when the document was printed, Respondent was represented by Carter Casteel and Amber Shemesh in that matter.

   b. As part of the mediated agreement in the modification, the parties agreed to transfer the case to Collin County. The Motion to Transfer was filed in Comal County on June 2, 2020. The order was signed on July 9, 2020 in Comal County. There was no active pleading. The final order was signed July 9, 2020. *See* Exhibit 1.

   c. The case transferred in to Collin County on July 13, 2020. The Collin County Register of Actions for Cause 417-53803-2020 is attached as Exhibit 2 and is incorporated herein for all purposes. It should be noted that on July 30, 2020 when the document was printed, Respondent was represented by Casteel Carter. Further, the pleadings transferred in were only orders. The first active pleading in the Collin County cause was the Petition to Modify filed by Petitioner.

   d. Petitioner hired Ms. Nielsen on July 27, 2020. Petitioner provided a copy of the Order signed on July 7, 2020 in Comal County, Texas to his attorney and indicated that the case had been transferred to Collin County, Texas but he was not aware of any active pleadings. See Email attached as Exhibit 3 attached and incorporated

fully herein, offered specific to this communication only and without any intent to waive attorney-client privilege.

e. Petitioner's prior attorney drafted sent the affidavit in support of the Petition to Modify and the request for the TRO with extraordinary relief at approximately 4:30 p.m. and Petitioner's current attorney filed the Petition to Modify Parent Child Relationship and the Proposed Temporary Restraining Order and Order Setting Hearing at 5:12 p.m. on July 27, 2020. The filing submission for the Petition to Modify Parent Child Relationship is attached as Exhibit 4 and is incorporated herein for all purposes. The filing submission for the Proposed Temporary Restraining Order and Order Setting Hearing is attached as Exhibit 5 and is incorporated herein for all purposes.

f. The Petition to Modify requested personal service to Respondent.

g. Petitioner's attorney was contacted via email asking about the safety of the children and why the exchange was missed at 7:43p.m. July 27, 2020. Petitioner's attorney responded that the children were safe. Email communication attached as Exhibit 6 and incorporated for all purposes.

h. The filings were both rejected at 8:33 a.m. on July 28, 2020. The filing return for the Petition to Modify Parent Child Relationship is attached as Exhibit 7 and is incorporated herein for all purposes. The filing return for the Proposed Temporary Restraining Order and Order Setting Hearing is attached as Exhibit 8 and is incorporated herein for all purposes.

i. Petitioner's attorney's office opened at 8:30 a.m. on July 28, 2020. Celia Morgan, the paralegal assigned to the case resubmitted the case to the e-file system.

j. Petitioner's attorney received notice of a filing of a An Application for Writ of

Habeus Corpus filed by Respondent's attorney on July 28, 2020. Petitioner's attorney instructed the paralegal to copy Respondent on any filings, and that was done and is being done.

As set out above, Petitioner's pleading and the actions of Petitioner and his attorney are not violative Rule 13 of the Texas Rules of Civil Procedure and therefore, the Court should not impose any sanction available under Rule 215.

WHEREFORE, PREMISES CONSIDERED, Petitioner, Michael Long, prays that the Motion for Sanctions filed by Kelly Long, Defendant, be in all respects, **DENIED** and the Plaintiff be granted such other and further relief, special or general, legal or equitable, as may be shown that Plaintiff is justly entitled to receive.

Respectfully submitted,

Bailey & Galyen

By:

Elizabeth Nielsen
Texas Bar No. 24034601
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Arlington, Texas 76013
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Fax. (817) 276-6013
Attorney for Petitioner.
Michael Long

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF Tarrant §

BEFORE ME, the undersigned authority, personally appeared Elizabeth Nielsen, who, on oath, stated that the statements made in the foregoing Response to Respondent's Motion for Sanctions Pursuant are true and correct.

Elizabeth Nielsen

SUBSCRIBED AND SWORN TO BEFORE ME on this the 11th day of August, 2020, to certify which witness my hand and seal of office.

LUSIA RODRIGUEZ
Notary Public, State of Texas
Comm. Expires 01-26-2023
Notary ID 130090970

Notary Public, State of Texas

CERTIFICATE OF SERVICE

I certify that on August 11, 2020 a true and correct copy of Plaintiff's Response to Motion for Sanctions Pursuant to Rule 13 of the Texas Rules of Civil Procedure was served on Amber Shemesh electronically through the electronic filing manager.

Elizabeth Nielsen

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Lucia Rodriguez on behalf of Elizabeth Nielsen
Bar No. 24034601
lrodriguez@galyen.com
Envelope ID: 45288829
Status as of 08/12/2020 08:47:36 AM -05:00

Associated Case Party: Kelly Long

Name	BarNumber	Email	TimestampSubmitted	Status
Amber Shemesh		amber@shemeshfamilylaw.com	8/11/2020 3:22:42 PM	SENT
Adriana Cancino		acancino@shemeshfamilylaw.com	8/11/2020 3:22:42 PM	SENT
Alexandra Willen		awillen@shemeshfamilylaw.com	8/11/2020 3:22:42 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Elizabeth A.Nielsen		enielsen@galyen.com	8/11/2020 3:22:42 PM	SENT
Celia Morgan		cmorgan@galyen.com	8/11/2020 3:22:42 PM	SENT